

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CLARK LANDIS, ROBERT BARKER,)
GRADY THOMPSON, and KAYLA BROWN,) CASE NO. C18-01512-BJR
)
Plaintiffs,) SEATTLE, WASHINGTON
)
v.) October 17, 2019
) 10:00 a.m.
WASHINGTON STATE MAJOR LEAGUE)
BASEBALL STADIUM PUBLIC) BENCH TRIAL, Day 3 of 4
FACILITIES DISTRICT, BASEBALL)
OF SEATTLE, INC., a Washington)
corporation, MARINERS)
BASEBALL, LLC, a Washington)
limited liability company, and)
THE BASEBALLCLUB OF SEATTLE,)
LLP, a Washington limited)
liability partnership,)
)
Defendants.)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: CONRAD A. REYNOLDSON
MICHAEL TERASAKI
Washington Civil & Disability Advocate
4115 Roosevelt Way NE, Suite B
Seattle, WA 98105

STEPHEN P. CONNOR
DERIK R. CAMPOS
Connor & Sargent, PLLC
1000 Second Avenue, Suite 3670
Seattle, WA 98104

For the Defendants: STEPHEN C. WILLEY
SARAH GOHMANN BIGELOW
Savitt Bruce & Willey LLP
1425 Fourth Avenue, Suite 800
Seattle, WA 98101-2271

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REPORTED BY:

NANCY L. BAUER
FEDERAL OFFICIAL COURT REPORTER
700 STEWART STREET, SUITE 17205
SEATTLE, WA 98101
(206) 370-8506

1 THE COURT: Good morning, all. We will, at least,
2 learn a little bit about the witness and get as much done in
3 the ten minutes we have before we go through our earthquake
4 drill.

5 | Are we ready to proceed, counsel?

6 MR. WILLEY: We are. Thank you for scheduling the
7 high jinx this morning.

8 | The defendants call Mr. Endelman.

9 THE COURT: Please step forward to be sworn by the
10 clerk.

11 WILLIAM E. ENDELMAN, HAVING BEEN FIRST DULY SWEARN,
TESTIFIED AS FOLLOWS:

13 THE CLERK: State your full name, and spell your last
14 name for the record, please.

15 THE WITNESS: William Endelman, William E. Endelman,
16 in completion. And, I'm sorry. What did you ask besides
17 that?

18 | THE CLERK: Please spell your last name.

19 | THE WITNESS: E-n-d-e-l-m-a-n.

20 DIRECT EXAMINATION

21 | BY MR. WILLEY:

22 Good morni

23 A Good morning

24 | Before we get

25 about your background.

1 If you could tell us, did you go to college?

2 A Absolutely. University of Pennsylvania.

3 Q University of Pennsylvania? Did you study anything
4 particular there?

5 A I studied architecture there, and as an undergraduate
6 there, with a BA in architecture, and then I was in the
7 Honors Program, which somewhat matriculated me into the
8 graduate school of architecture during my senior year. So my
9 first year of graduate work was as a senior, and stayed
10 there, all total, seven and a half years, and then ended up
11 with a Master's in architecture.

12 Q Did you do any other graduate work or other advanced
13 education after that?

14 A The only other educational -- other than, obviously,
15 seminars and continuing education, the only other things
16 would be a noncredit course at University of Washington
17 called the Management Program. About 1990, I did that.

18 Q Are you a licensed architect?

19 A I'm a licensed architect in both Washington and
20 California.

21 Q Are you currently employed, Mr. Endelman?

22 A I am retired from Endelman & Associates, the firm that I
23 founded 24 years ago. I'm technically a part-time employee
24 at the moment, which enables me to do things like I'm doing
25 today, and some miscellaneous consulting.

1 Q What is Endelman & Associates?

2 A Endelman & Associates is an architecture firm. It's a
3 12-person firm now. It started out with just me and my home
4 office. And we do no traditional architectural services; no
5 design, no construction documents. We specialize in
6 accessibility consulting, which includes ADA compliance, Fair
7 Housing Act compliance, uniformed federal accessibility
8 compliance, accessibility building code compliance, all the
9 applicable standards for any building type.

10 And our primary work is proactive work. We review plans
11 at various stages of design to help the architects ensure
12 that their plans comply. If they're not designed right on
13 paper, they're certainly not going to get built right in the
14 field. And then most of our clients hire us to go out into
15 the field at certain key points during construction, to make
16 sure it is, in fact, being built per the plans.

17 And, of course, we do some miscellaneous consulting, and
18 occasionally some expert witness work, such as this.

19 Q If you could look at Exhibit 24, please.

20 A I'm sorry. I'm having a little bit of trouble hearing
21 you, Steve.

22 Q Certainly.

23 If you could look at Exhibit 24, and we'll pull it up
24 on the screen.

25 Are you familiar with this document, Mr. Endelman?

1 A I am. It is from my CV.

2 Q And is it accurate?

3 A Yes, it is.

4 Q At the bottom of the first page and on to the second page
5 is a listing of cases. What are those, just generally?

6 A They are, I believe -- let me just take a quick look.
7 These all happen to be Fair Housing Act cases, either for the
8 plaintiff -- the representative plaintiff, which is the
9 Department of Justice, or the last one there, it was for the
10 defendant, on behalf of the owner of a property.

11 Q Have you consulted on behalf of the Department of Justice?

12 A Yes.

13 Q And have you also consulted on behalf of parties that were
14 subject to actions by the Department of Justice?

15 A Yes.

16 Q If we look at this page here, Exhibit 24, and we'll go to
17 the second page, these are all cases in which you were
18 retained as an expert witness or consultant?

19 A That is correct.

20 Q Are you familiar with the Americans with Disabilities Act?

21 A I am.

22 Q Are you familiar with the implementing regulations?

23 A I'm sorry. The what?

24 Q The implementing regulations, the 1991 standards.

25 A Yes, I am.

1 Q And are you familiar with DOJ guidance subsequent to the
2 original 1991 standards?

3 A Yes, I am.

4 Q Do you know who the architects were for T-Mobile Park?

5 THE COURT: Counsel, let me make a suggestion. If
6 you would speak more slowly and articulate very carefully,
7 and we won't have to ask you to repeat. Okay?

8 MR. WILLEY: Thank you, Your Honor.

9 Q (By Mr. Willey) Do you know, Mr. Endelman, who the
10 architects were for T-Mobile Park?

11 A Yes. NBBJ. And NBBJ is a large, old-line Seattle firm
12 that does work nationally and internationally, including this
13 building, and is probably in the third generation of
14 ownership, I suspect.

15 Q Mr. Endelman, if one were designing a stadium in 1996,
16 what would be the relevant regulations or other DOJ guidance
17 for purposes of determining sight-line requirements for
18 accessible seating, what would you look at?

19 A Well, the starting point is the 1991 ADA standards, in
20 particular, Section 4.33.3. And I see you've popped it up on
21 the screen there. And it is -- and that's followed up by a
22 couple of guidance documents that the Department of Justice
23 issued.

24 In 1993, there was a TAM, or a technical advisory manual,
25 and in 1994, they did a supplement to that TAM, and then they

1 issued an undated document in 1996 called *Accessible*
2 *Stadiums*, and those are the three guidance documents that
3 were issued by the Department of Justice, which stand the
4 same till today, except for the updated 2010 ADA standards.

5 MR. WILLEY: Rondi, if you could go to Defense
6 Exhibit 2, please.

7 Q (By Mr. Willey) On your screen, and also listed as
8 Defense Exhibit 2 in the book in front of you, Mr. Endelman,
9 is a document labeled "*Accessible Stadiums*." Is that the
10 document you were referring to?

11 A Yes, it is.

12 Q And if we could go to the second page of that document.

13 Are you familiar with the drawing here on the second
14 page, and the text above it?

15 A Yes, I am. This is where, essentially, the Department of
16 Justice has defined lines of sight in that diagram, and that
17 constitutes what would be comparable sight lines to the
18 general public.

19 Q And if you were looking at this -- and it says in the last
20 sentence there of the second paragraph, "A comparable line of
21 sight, as illustrated in the figure below, allows a person
22 using a wheelchair to see the playing surface between the
23 heads and over the shoulders of the persons standing in the
24 row immediately in front and over the heads of the persons
25 standing two rows in front."

1 A That's correct.

2 Q And is that what this diagram depicts that?

3 A And that's what the diagram depicts. And, in fact, this
4 is the first time the Department of Justice has actually
5 defined that fact. In the '91 ADA standards, they don't even
6 talk about seeing over standing spectators.

7 Q In 4.33.3, there's no mention of it?

8 A There's no mention of that.

9 Q Does the *Accessible Stadiums* document contain any
10 information regarding how the scope or perspective of the
11 playing surface would be for the wheelchair user in this
12 picture?

13 A No, there is no detail whatsoever on that perspective.

14 MR. CONNOR: Your Honor, I recommend that we should
15 look at the document itself in terms of what it says. The
16 document speaks for itself. So if Mr. Endelman can read what
17 it said in that regard, I'd appreciate it.

18 THE WITNESS: I'm not understanding what you're
19 trying to say.

20 THE COURT: The question and answer can stand. Let's
21 just go. You can raise this on cross-examination, if you
22 wish, counsel.

23 Q (By Mr. Willey) Is there any guidance provided in the
24 *Accessible Stadiums* document or otherwise by the DOJ that
25 shows this diagram, or something like it, in a

1 general-public, non-accessible seat? In other words, is
2 there a comparative diagram that is out there?

3 A Well, the comparative diagram is the one that's up on our
4 screens here that is referenced in the paragraph on lines of
5 sight. That's the only place that occurs.

6 Q In the 23 years since *Accessible Stadiums* in 1996, has the
7 Department of Justice provided any other guidance beyond this
8 document as to what comparable lines of sight, how they are
9 to be calculated?

10 A There are no DOJ-published documents that I'm aware of.

11 Q And we have an additional 2010 standard, but there's no
12 new drawing or other perspective; is that right?

13 A That's correct.

14 Q Are you familiar with an *Ellerbe Becket* consent order?

15 A Yes, I am.

16 MR. WILLEY: If you could pull that up, Rondi. I
17 believe it's DX-3, Defense Exhibit 3, the second page of
18 this, please.

19 A If you can enlarge that, please. I have macular
20 degeneration.

21 MR. WILLEY: No worries. We're blowing this up.

22 THE COURT: Is this big enough?

23 THE WITNESS: Yes, that's great.

24 Q (By Mr. Willey) Do you recall what the *Ellerbe Becket*
25 consent order required?

1 A Well, essentially, it was a complaint about a stadium of
2 the same vintage as this stadium that we're under discussion
3 here. And I think one of the most significant things in here
4 is, the Department of Justice did not require -- or the
5 agreement did not require any alterations to the stadium in
6 question. It's a forward-looking document that says here's
7 what you need to do going forward designing stadiums.

8 Q What did the Department of Justice say you needed to do
9 going forward?

10 A It said to comply with the *Accessible Stadiums* document
11 and provide the sight lines and range of prices available to
12 the general public that was in that document.

13 Q If you look at the last two sentences of the paragraph 5,
14 the first -- the penultimate sentence says, "For purposes of
15 this order, Ellerbe shall calculate sight lines for
16 wheelchair seating locations as described in the Department
17 of Justice publication entitled *Accessible Stadiums*."

18 A Correct, that's exactly what it says.

19 Q Did the Department of Justice provide Ellerbe Becket any
20 information regarding anthropometric dimensions to use in
21 doing so?

22 A Yes. For the first time in this document, there is some
23 anthropometric dimensions given for what is the average
24 height of a seated wheelchair user, what's the assumed height
25 of the general public in the seats in front, and things of

1 that sort.

2 MR. WILLEY: If we could go to the last page of the
3 order, please, Rondi. I'm looking for the part that's
4 Exhibit B. There it is.

5 Q (By Mr. Willey) This is Exhibit B to the order of -- the
6 consent order. Are these the anthropometric dimensions
7 you're referring to?

8 A Yes, they are.

9 And, by the way, these dimensions do not occur in any
10 of the DOJ documents before this. They do not occur even in
11 the 2010 ADA standards. So if you're designing a stadium
12 today, again, we're working with the same information.

13 Q The only place the DOJ has articulated anthropometric
14 dimensions is in this consent order?

15 A That's correct.

16 And I think it's important to realize that architects
17 are not attorneys. You know, they don't cruise Lexis Nexus
18 trying to find every possible court case that could involve
19 their design, and it's not, I think, realistic to expect that
20 architects do that.

21 Architects do -- you know, when they do kind of a project,
22 they do what's called a code check, which includes ADA and
23 Fair Housing Act, and look for all the documents that are
24 applicable to what they're designing. And these are the ones
25 we've discussed here for the applicable documents.

1 MR. WILLEY: Your Honor, I'm shifting into another
2 topic, and I'm wondering, in light of our forthcoming
3 activities, if this might be a good place to stop, briefly.

4 THE COURT: Yes. You do understand why we're taking
5 a break here?

6 | THE WITNESS: Yes.

7 THE COURT: Yes. My understanding is that we only
8 need to take a break for about five minutes. Rhonda will let
9 you know when it's really over.

10 | You may step down.

11 The court will be in recess for a short while.

12 (Court in recess.)

13 | THE COURT: You may resume the stand.

14 Q (By Mr. Willey) Mr. Endelman, do you have an opinion
15 regarding sight lines at T-Mobile Park?

16 A Yes. I do.

17 | Q Could you tell the court and us what that is?

18 A My opinion is that the sight lines comport with the
19 diagram and the description in the *Accessible Stadiums*
20 documents and that, as built, the stadium complies.

21 MR. WILLEY: Could we look, please, Rondi, at DX-1,
22 Defense Exhibit 1?

23 Q (By Mr. Willey) Mr. Endelman, are you familiar with this
24 diagram, or these two diagrams?

25 A Yes, I am. They were created by my firm.

1 Q Could you please explain to the court what these diagrams
2 show?

3 A What we did is we took the diagram -- the intent of the
4 diagram in that *Accessible Stadiums* document and,
5 essentially, took the NBBJ drawings of the stadium that show
6 what the actual layouts of the seats were and the actual
7 dimensions; measured, in these particular sections, the
8 actual heights and spacing of the rows and the height of the
9 platform, and, essentially, made the diagram that was in that
10 document represent what's there in reality.

11 And so there's two diagrams here that represent two
12 different sections. And what the diagrams show is that the
13 sight lines of a seated wheelchair user on the platform
14 behind other seats comports with the requirement that you be
15 able to see over the shoulders and between the heads of
16 people in the row immediately in front, and over the heads of
17 people in the second row in front of the accessible seating.

18 Q This top document or top diagram is Section 112, and then
19 the one below it is Section 224. Do you know why those
20 sections were picked?

21 A I do not. I just know that those were the sections that
22 were in the complaint that we analyzed.

23 Q They were in the complaint?

24 A Yes.

25 Q Got it.

1 THE COURT: These sections are specifically referred
2 to in the complaint?

3 MR. WILLEY: They are referred to and cited in the
4 complaint, Your Honor.

5 Q (By Mr. Willey) Did Mr. Sanderson go out and do field
6 measurements at T-Mobile Park?

7 A Yes, he did.

8 Q And can you explain in more detail how this diagram gets
9 created?

10 A Yes. I mean, basically, with CAD software and
11 contemporary software, you're able to scan a diagram, stretch
12 it, dimension it, change it very easily. So we, basically,
13 took the Department of Justice diagram and, you know,
14 superimposed it, if you will, on the actual layouts of the
15 seating in the section.

16 THE COURT: And the heights, I suppose you're going
17 to ask, since this is your --

18 MR. WILLEY: My next question, Your Honor.

19 THE COURT: Go ahead.

20 Q (By Mr. Willey) What were the anthropometric dimensions
21 that you used for this analysis that's Section 112 and
22 Section 224?

23 A We used the anthropometric dimensions that were in the
24 *Ellerbe Becket* case, the only place that has any
25 anthropometric dimensions, and so that's what was used in

1 these diagrams.

2 Q This Section 112 sight-line study does not indicate how
3 much of the playing surface the viewer can see. Why is that?

4 A Again, there's no requirement in the *Accessible Stadiums*
5 document that tells you how much of the playing surface
6 you're supposed to be able to see.

7 Q There's no information anywhere about that?

8 A There's no information anywhere about that.

9 Q And according to the analysis that you've done in Section
10 112 and Section 224, does that wheelchair user have a line of
11 sight to the playing surface?

12 A Correct, it does. It looks down over the bowl of the
13 stadium.

14 MR. WILLEY: Rondi, if you could pull up Defendants'
15 Exhibit 22, please.

16 Q (By Mr. Willey) Mr. Endelman, here is a picture of
17 Section 116 at T-Mobile Park. Have you ever seen this
18 section?

19 A Yes, I have.

20 Q Can you tell me what the picture is depicting?

21 A Well, what you're looking at is the flexible seating on
22 the platform where accessible seating and companion seating
23 is provided. And there's a railing both for safety, and it's
24 a drink rail, if you will. And it overlooks, as you can see,
25 the entire bowl of seating in front of it, and the playing

1 field.

2 Q What are those seats that are in the picture there?

3 A They are flexible seating. You know, there's an option,
4 really, of providing fixed seating for able-bodied people and
5 spaces of a particular size so a wheelchair can be
6 accommodated adjacent to a standard seat.

7 This is actually much more flexible. It doesn't say one
8 person who is a wheelchair user sits next to one person who
9 is in a seat. This can be -- all these seats can be moved to
10 any layout you want to accommodate a group of customers that
11 include somebody who is disabled and in a wheelchair.

12 THE COURT: You used the word "fixed seating." These
13 chairs are not fixed to the floor?

14 THE WITNESS: No, they're not. It's, actually,
15 superior to having them fixed because it gives flexibility.

16 Q (By Mr. Willey) So under this flex model, this picture
17 shows three seats, and the idea is that you could have a
18 wheelchair in any one of those spaces or all three of them;
19 is that right?

20 A Yes. I mean, as they're sitting here right at the moment,
21 obviously the spaces between these chairs are not sufficient
22 to have a wheelchair between them, but they can be moved to
23 accommodate that.

24 Q Got it.

25 A And the overall dimension of the platform is specific for

1 a certain number of seats and wheelchair seats.

2 Q Understood.

3 MR. WILLEY: Rondi, could you flip to the next
4 picture in Exhibit 22?

5 Q (By Mr. Willey) So, here, we're looking at the same
6 section, different perspective. What does this show,
7 Mr. Endelman?

8 A Well, this gives you a good view to show the height of the
9 platform and step that shows the dimension of how much higher
10 it is than the stepped-seating below. So it's clearly a
11 higher platform, significantly higher.

12 Q And are you referring to -- and I'm going to draw on this
13 picture with my finger. Are you referring to that piece
14 there?

15 A Correct.

16 Q And is that platform that's raised, is it one that
17 requires a ramp to get up to, or is it on level with the
18 concourse?

19 A This is on a direct-accessible route from the concourse,
20 and it's also the required means of egress that all
21 accessible seating has to have.

22 Q Got it.

23 MR. WILLEY: Rondi, if we could look at the next
24 picture, please.

25 Q (By Mr. Willey) Now we have another view of 116

1 accessible seating from just below. What is this showing
2 here?

3 A I think it's just another view of the same thing. It
4 really is showing how much higher that platform really is,
5 and the stepped seating and the normal rake of the bowl
6 below.

7 Q When you were looking at the stadium, is the platform that
8 you see in this picture here, is that consistent with the
9 platforms on the 100-level accessible seating?

10 A Yes, it is.

11 MR. WILLEY: Rondi, if we could go to the next
12 picture.

13 Q (By Mr. Willey) And then we're looking at the other end
14 here, and this is just a different view of the same thing; is
15 that correct?

16 MR. CONNOR: Your Honor, I apologize, but we received
17 these pictures, for the first time, a day or two ago. I've
18 never seen them. Mr. Endelman's report pertains to two
19 sections, 112 and 224. I have not had an opportunity to look
20 at these exhibits, cross-examine him about them, or talk to
21 him about his assertions that these are the same platforms as
22 elsewhere.

23 So this is now completely new testimony, completely beyond
24 the scope of his expert report, and to the extent they're
25 making complaints about the pictures that were provided by

1 us, months in advance, ones that we got two days ago should
2 not be the subject of interrogation of this witness.

3 MR. WILLEY: Your Honor, these are simply pictures of
4 the sections that he looked at in the stadium. He's not
5 testifying about anything other than that those are what he
6 saw.

7 And these are not any different than the pictures that we
8 talked about with the plaintiffs.

9 THE COURT: Not different than what pictures?

10 MR. WILLEY: There have been pictures provided by the
11 plaintiffs, at various times, long, long, long after
12 discovery, all the way up to just before trial, and the court
13 has said that there is no issue with those.

14 These are simply illustrating, visually, so that the court
15 can see what we're talking about.

16 MR. CONNOR: Your Honor --

17 MR. WILLEY: I don't think there's any question about
18 the authenticity or the accuracy of these pictures, and
19 there's no prejudice whatsoever.

20 MR. CONNOR: Your Honor, I misspoke. We received
21 these pictures an hour ago. All right?

22 And Mr. Endelman gave me no testimony during his
23 deposition, there's nothing in his report about the level of
24 these platforms and how they're accessible and where they're
25 ramped and what height they are.

1 Mr. Endelman himself has never visited the stadium. He
2 did --

3 THE WITNESS: That's not correct.

4 MR. CONNOR: Oh. Well, at the time of your
5 deposition, when I was interrogating you, you had not visited
6 the stadium.

7 THE WITNESS: That would be correct.

8 MR. CONNOR: So --

9 MR. WILLEY: Mr. Endelman's report depicts and shows
10 these exact platforms, Your Honor --

11 MR. CONNOR: No --

12 MR. WILLEY: Those are, actually, measured in his
13 report. He talks about accessible egress in his report. All
14 we're doing is visually showing what it is we're talking
15 about, I don't think there's any question --

16 THE COURT: Mr. Willey, are you seriously telling me
17 that these pictures were never provided to the other side?

18 MR. WILLEY: I am telling you those pictures were
19 only taken recently, Your Honor, because we realized there
20 was no pictures showing the court what the thing looked like.
21 Plaintiffs have never shown the court what it looked like.

22 I don't think there's any question about the accuracy or
23 validity or authentication of these pictures.

24 And if plaintiffs have a complaint about what we're
25 showing, I'm happy to ask questions of Mr. Endelman about it,

1 or anybody else. These are merely depictions of the seats as
2 they exist.

3 And I don't think Mr. Endelman's testimony is expert
4 testimony here --

5 THE COURT: Did you not know that this witness would
6 be testifying about this? I mean, with or without the
7 pictures.

8 MR. CONNOR: I didn't know anything. What I knew was
9 that Mr. Endelman's testimony pertained to Sections 112 and
10 224. That's all I knew about. That's what his report was
11 about.

12 And when I asked him a list of questions about whether he
13 knew anything about the sight lines from any other sections,
14 he told me no.

15 So until Mr. Willey started asking, today, about pictures
16 of these sections that I have not interrogated him about, I
17 don't personally know --

18 THE COURT: Are 112 and 124 substantially different
19 than --

20 MR. CONNOR: I don't know that. That's my
21 difficulty, Your Honor. I'm sitting here not certain of
22 that.

23 MR. WILLEY: Your Honor, just to correct, if I could.
24 It's 112 and 116.

25 THE COURT: Oh, 112 and 116?

1 MR. WILLEY: Yeah.

2 THE COURT: 116 is what we're talking about.

3 MR. WILLEY: 116 is what was measured, the sight
4 line. Mr. Endelman is not testifying to the sight line in
5 this picture. He's using this pictures to show the court
6 what the sections in the 100 level look like.

7 And he can testify to what they look like. He's not
8 offering expert opinion insofar as he said, "I went out
9 there, and the 100-level accessible seating, all is on a
10 platform like this." This is two sections away. The other
11 pictures, by the way, are 224.

12 THE COURT: Are what?

13 MR. WILLEY: 224, which is in the diagram.

14 THE COURT: Mr. Connor, I'm not sure that his
15 testimony is, actually, all that different. I'd be happy to
16 take a look at his report, if that's what you'd like the
17 court to do.

18 But I am troubled that you haven't actually seen these
19 pictures before. So what I propose we do is that we continue
20 with his testimony, because that will give you a good idea of
21 where it's going and what he's going to say. And then we'll
22 take a break for as long as you need. If you feel the need
23 to depose the witness additionally before you proceed with
24 cross, or if you feel the need to have some time to talk to
25 Mr. Terry about what you're seeing, we'll make that happen.

1 Okay?

2 I mean, I'm disturbed. I realize -- I think, in
3 actuality, you're not seeing anything that should be a total
4 surprise, because this is what he talked about. It's 116.
5 It's the same section. Anybody who's out there would have
6 seen the platform, the chairs in front of it, the flex
7 chairs, whatever. I don't think there's anything new in
8 this. But you haven't seen it, and that troubles me. And I
9 want to give you an opportunity to sort of regroup with the
10 testimony and with the pictures in mind, and take as long as
11 you need to regroup about it. Do you see what I'm saying?

12 MR. CONNOR: I do, Your Honor, and I appreciate that.

13 I have complete confidence in the facts of our case. I'm
14 just sitting here this morning, knowing that what I prepared
15 for pertained to the report I'd been given and at deposition,
16 and now we're moving beyond what is in either of those. So I
17 appreciate your offering the opportunity to consider this.

18 THE COURT: Okay.

19 MR. CONNOR: Thank you.

20 THE COURT: I think what we should do is proceed, but
21 after you've had a chance to hear the testimony, before you
22 begin your cross-examination, somewhere in there we're going
23 to have lunch --

24 MR. CONNOR: Okay.

25 THE COURT: -- so you will have a chance to consider

1 how much time you need, what you need. I'm going to give you
2 enough time to regroup, with the pictures in mind.

3 But as I say, I really -- I don't feel uncomfortable with
4 proceeding, because I think these pictures are really doing
5 no more than illustrating his deposition and report
6 testimony.

7 MR. CONNOR: And needless to say, Your Honor, it's a
8 bit frustrating when you produce pictures, months in advance,
9 for Mr. Willey, for him to complain about the surprise that
10 he had, and then for me to be getting these one hour ahead of
11 court today. I didn't even think we had them. Mr. Campos
12 had to tell me we have them.

13 THE COURT: I hear your frustration, and I understand
14 where you're coming from, and I think you're justified in the
15 fact that these shouldn't have been sprung on you an hour
16 before the testimony.

17 I'm just saying that when the court considers the help
18 that these illustrations give versus the fact that they
19 should have been given earlier, but, in fact, were not --
20 they can't be considered a total surprise. This is just
21 exactly what the whole case is about. I mean, everybody but
22 this court has been out there and looked at this section. We
23 all know -- it's helpful to the court to see these pictures,
24 and it can't be that much of a surprise or something new.

25 But you haven't seen them before, and I'm trying to work a

1 fair accommodation so that you can work them into your
2 cross-examination and discuss them with your expert. But I
3 don't think it's the kind of surprise that would cause me to
4 exclude these exhibits.

5 MR. CONNOR: Okay.

6 THE COURT: So let's proceed.

7 MR. WILLEY: And, Your Honor, I'm very confident that
8 Mr. Terry would opine that these are the same things he
9 looked at. Mr. Terry was at the stadium, he was looking at
10 Section 100, pieces of this, and I think he would have
11 complete agreement these are what was there.

12 THE COURT: Clearly, they're accurate pictures of
13 what's there. It's just that the way trials proceed --
14 Mr. Willey, I don't have to lecture you about discovery,
15 do I?

16 MR. WILLEY: No.

17 THE COURT: But the way trials proceed, if a witness
18 is going to use exhibits on the stand, we presume that those
19 exhibits have been shown to the other side, at some point.

20 MR. WILLEY: Fair enough, Your Honor.

21 And we simply realized, in going through the pictures,
22 that there was no picture showing the court what this looked
23 liked. That's all.

24 THE COURT: You're talking too fast.

25 MR. WILLEY: There's no picture in the record showing

1 what any of this stuff actually looked like, and we just
2 thought it would be useful illustration. I understand --

3 THE COURT: Believe me, the court appreciates these
4 pictures. They're exactly what the court needs to see about
5 what this really looks like. I need to see that, and I find
6 them very helpful. I just think, in the interest of attorney
7 relationships, it would have been appropriate to show them to
8 opposing counsel, at least last night. Well, of course, the
9 witness didn't get here until today.

10 MR. WILLEY: I understand, Your Honor.

11 THE COURT: But we're going ahead here, so let's go.

12 MR. WILLEY: Could we look at Exhibit 23, please,
13 Rondi?

14 Q (By Mr. Willey) Here, we have Section 224, Mr. Endelman.
15 Have you viewed this section?

16 A Yes, I have.

17 Q What is this picture depicting?

18 A Again, it's simply showing the accessible platform where
19 the accessible seating is, and a view of the field.

20 Q Got it.

21 MR. WILLEY: Rondi, if you'd go to the next picture,
22 and then the next one after that.

23 Q (By Mr. Willey) What is this picture depicting, Section
24 224, again, Mr. Endelman?

25 A Again, it's just a three-dimensional version of the

1 diagram we had in our report.

2 Q So if I'm looking at Exhibit 1, and I'm looking at the
3 second -- Defendants' Exhibit 1, and I'm looking at the
4 second sight-line study, Section 224, this is showing, in a
5 picture form, that same section?

6 A Correct.

7 Q And then what is this piece here?

8 A That is the added platform height that was built into the
9 structure to accommodate the sight lines.

10 Q And that's the platform that's shown in your Section 224
11 sight-line study in Defendants' Exhibit 1?

12 A Yes.

13 THE COURT: When you say "added platform height" --

14 THE WITNESS: Let me clarify, Your Honor.

15 Without putting these platforms, a stadium just step,
16 step, step, step, step, and this thing is a giant step, if
17 you will, and so that's what that platform represents.

18 THE COURT: I see. Well, actually, it's the
19 equivalent of --

20 THE WITNESS: Multiple steps.

21 THE COURT: -- of three steps, probably, three and a
22 half, four, five. I see what you're saying.

23 You didn't mean added after the building --

24 THE WITNESS: No. Sorry for the confusion, Your
25 Honor.

1 THE COURT: Okay.

2 Q (By Mr. Willey) And is the accessible seating here at 224
3 at grade with the concourse?

4 A Yes, it is.

5 Q When you were talking with the judge just a moment ago,
6 you used a phrase "step, step, step" for a stadium. You're
7 referring to these steps here, right?

8 A **Correct.** Each row of seats goes down a couple of steps.

9 | Q Got it.

10 And then you have this section here, which is the
11 platform for the ADA seats?

12 A **Correct.**

13 Q If you had been engaged by NBBJ in 1996 to do plan review
14 with respect to sight lines, what would you have done?

15 A Essentially, the same review using the same Department of
16 Justice diagram. The only difference is, we would use the
17 as-designed height of the platform and spacing, as opposed to
18 what's built in the field. So there may be some tolerance
19 differences between the drawing and construction.

20 Q Because when you're doing a plan review, the building
21 doesn't exist yet?

22 A Exactly.

23 | THE COURT: When you're doing what?

1 design, not the as-built.

2 THE WITNESS: Exactly. We're looking at what's on
3 paper.

4 Q (By Mr. Willey) What would you have told NBBJ regarding
5 comparable lines of sight?

6 A I would have said based upon the limited information
7 available from the Department of Justice, it's my opinion
8 that this complies.

9 Q What if you had done a field survey in late 1998 or early
10 1999, just before the stadium opened; what would you have
11 done then to assess compliance with the comparable line of
12 sight?

13 A Essentially, the same thing we did in response to this
14 complaint that generated those diagrams.

15 Q You would have then looked at the stadium as built, not in
16 the plan?

17 A Correct, and we're taking the same measurements in the
18 field that we just took.

19 Q And what would you have told NBBJ regarding compliance or
20 not with the ADA standards in effect?

21 A I would have told them that the stadium complied.

22 Q And that would have been based upon your use of the same
23 process you used to do the studies of Section 112 and 224 in
24 this case?

25 A That's correct.

1 THE COURT: So when you would have told them that it
2 had complied, you were basing it on what? Tell me again.

3 THE WITNESS: I would have -- they would have had
4 drawings that had dimensions of the platform heights and the
5 spacing of the seating rows, et cetera, et cetera, and those
6 are the dimensions that I'd be reviewing, and I would have
7 said it complied with the diagram in the *Accessible Stadiums*
8 document.

9 Q (By Mr. Willey) And then when you did a field survey when
10 the building had been constructed, would you have been
11 looking at the plans, or at the building itself?

12 A We'd be using the real dimensions in the field as
13 constructed.

14 Q And your analytic process would have been the same; is
15 that correct?

16 A Essentially, yes.

17 Q Based upon the *Accessible Stadiums* document and the
18 diagram presented there?

19 A Yes, correct.

20 Q When you were consulting clients regarding ADA compliance,
21 what sort of perspective do you take in terms of that
22 consulting? What kind of information or objective or
23 perspective are you trying to provide them?

24 A Well, our firm doesn't take any advocacy position
25 whatsoever. We simply do our very level best to have

1 objective and neutral opinions on the documents that are
2 available, and that's what we hold as the standard in our
3 reviews.

4 Q You have seen Mr. Terry's report; is that correct?

5 A Yes.

6 Q Mr. Terry has a different perspective in his opinions; is
7 that correct?

8 A I believe so.

9 Q In your view, is Mr. Terry's opinion analysis consistent
10 with the *Accessible Stadiums* document?

11 A I think the extensive diagrams that he did really
12 represent going beyond what the diagram in the *Accessible*
13 *Stadiums* document shows. I think it's really more what he
14 would like the standard to define, and the standard doesn't
15 give a lot of definition.

16 Q Mr. Endelman, do you have an opinion regarding the
17 distribution of accessible seating at T-Mobile Park?

18 A Yes. I believe the distribution at T-Mobile Park has a
19 distribution around the stadium and at the different levels
20 of seating -- the 100 level, the 200 level, the 300 level --
21 and there's a wide range of prices, from inexpensive seats to
22 very expensive seats, that are able to be chosen.

25 Q (By Mr. Willey) Mr. Endelman, when you were talking about

1 the distribution of accessible seats at T-Mobile Park, does
2 this document show what you were talking about?

3 A Yes, it does.

4 Q What do you see in this document?

5 A What I see is numerous accessible seats surrounding the
6 playing field; at the rear of Level 1; there's accessible
7 seating at the rear of Level 2; and in the center of Level 3,
8 which is where the direct access to the concourse is; in
9 addition to additional seats in the 100 section at the front
10 row, where the Diamond Club is; and accessible seats in the
11 bleacher section of the park as well -- what's called the
12 bleachers out in the outfield.

13 Q Got it.

14 When you are looking at distribution, are you looking
15 at the stadium as a whole, or are you doing a
16 section-by-section analysis?

17 A As a whole. As a whole.

18 Q Is the accessible seating at T-Mobile Park situated such
19 that it provides access to parking and to the public areas
20 and concessions?

21 A Yes. All seating, as provided, is connected by an
22 accessible route to the accessible parking, to the concourse
23 where all the food concessions and restrooms and other
24 amenities are provided. So, yes. And that also serves as
25 the required accessible means of egress from the stadium for

1 | accessible seating.

2 Q Have you done any detailed analysis of pricing of tickets
3 at T-Mobile Park?

4 A No, we have not. That was beyond our scope of work.

5 | Q Okay.

6 Have you seen the platforms that exist for two sections
7 in Section 200?

8 A Yes, I have.

9 Q Could you tell us about what those are?

10 A What I understand is, there are two platforms that were
11 added at the request of a particular customer, a good
12 customer of the Mariners, and those platforms were,
13 essentially, superimposed on the structure. They're not
14 really the original structure of the stadium. And they have
15 long, it appears, non-compliant ramps leading up to those
16 platforms.

17 | THE COURT: Let me understand this.

18 Were they superimposed on an already-existing platform, or
19 were they superimposed on level ground?

20 THE WITNESS: They were superimposed upon the stepped
21 stadium seating. They were built up from the concrete
22 structure of the stadium, if you will.

23 THE COURT: So there was no wheelchair-accessible
24 platform there before?

25 | THE WITNESS: I don't believe so.

1 THE COURT: Okay. I see. There were steps there.

2 THE WITNESS: Yes.

3 THE COURT: Stepped seating.

4 THE WITNESS: Right. Think of it almost like the
5 deck of your house that is just above whatever is below, and
6 whatever is below was existing seating.

7 Q (By Mr. Willey) Did you measure the ramps?

8 A I did not.

9 Q You were looking at them to see, based upon your
10 experience, whether they appeared compliant?

11 A Yes.

12 Q And were they long?

13 A They were quite long.

14 Q And in your view of what would make it non-compliant, was
15 it because of the rise?

16 MR. CONNOR: Your Honor, I'm sorry, but Mr. Endelman
17 has not taken the measurements necessary to ascertain whether
18 these comply. I don't think he should be saying what he
19 thinks based on appearances.

20 THE COURT: I think he's --

21 MR. CONNOR: I don't think it's relevant, in any
22 event, but I don't think he's got the qualifications or
23 should be testifying that he has any expert opinion about
24 whether they're compliant or not.

25 THE COURT: Let's see exactly how he reached the

1 conclusion. Okay?

2 Q (By Mr. Willey) I think I asked you whether you had
3 measured them, and the answer?

4 A I did not measure them. I have been doing measurements
5 for 25 years on this stuff, and you get to have a pretty good
6 eyeball for things that appear to be non-compliant. Do I
7 know for a hundred percent sure? No.

8 There's also a maximum run of ramp you're allowed to have
9 before you need a level landing, and I didn't see any
10 intermediate landings on those ramps.

11 THE COURT: Is your opinion about noncompliance due
12 to the length, or due to the pitch, if "pitch" is the right
13 word?

14 THE WITNESS: I suspect that, but I don't know that.
15 So I'm not testifying they're definitely non-compliant. I'm
16 just saying --

17 THE COURT: You're not testifying that they're
18 non-compliant?

19 THE WITNESS: Not with definiteness, no.

20 Q (By Mr. Willey) Do you have any knowledge of whether
21 those platforms will exist next year?

22 A My understanding is they're actually being removed because
23 the stadium is providing an amenity that's going to have
24 tables and chairs in that area, including accessible tables
25 and chairs.

1 THE COURT: Is this an accessible area that's going
2 to have the tables and chairs?

3 MR. WILLEY: Your Honor, it's the area that was
4 testified to by Mr. Rogel. It will have accessible seating
5 in both the loge areas, the four-top seats, and additional
6 regular Terrace Club accessible seating, all three different
7 places.

8 THE COURT: Continue.

9 MR. WILLEY: Mr. Endelman, I don't think I have any
10 further questions for you. Let me just consult with my
11 colleague.

12 Thank you, Mr. Endelman.

13 THE COURT: Sorry. Are you finished?

14 MR. WILLEY: I am done.

15 THE COURT: Well, what is your wish, Mr. Connor?

16 MR. CONNOR: Your Honor, what I would like to do, if
17 it's okay, I'd like to start, while some things are fresh in
18 my mind, then I'd like to make sure I have a break before I
19 complete Mr. Endelman's testimony, if that's all right.

20 THE COURT: Why don't you start --

21 MR. CONNOR: Okay.

22 THE COURT: -- see how long you go, and when you need
23 a break, let me know, and we'll see how we can work this out.
24 Okay?

25 MR. CONNOR: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. CONNOR:

Q Hello, Mr. Endelman. You and I met before in your deposition, correct?

A How are you, Mr. Connor?

Q Good. Nice to see you.

Mr. Endelman, I wanted to start by talking a little bit about your experience with respect to sight lines in public facilities and stadiums. All right?

I asked you, in your deposition, whether you had ever done an analysis of whether sight lines were appropriate and in compliance with ADA requirements in stadiums such as this. Do you remember that?

A Yes.

Q And you told me that you had not, correct?

A That's correct.

Q And, in fact, you've never done that until you were asked to do that in this case, correct?

A That's correct.

Q 0kay.

So you had no experience or expertise prior to being retained in this case with respect to doing sight lines in stadiums, correct?

A We've not done an analysis such as this because we've never had a client who's asked us to do that scope of work.

1 Q So the answer is no, you don't have any experience doing
2 this?

3 A I have experience in knowing how to use codes and do
4 things. So, to me -- it's routine for us to have new
5 building types, new jurisdictions, new technical standards
6 and building codes, and so there's nothing magical about
7 that.

8 Q But the short answer is, prior to being retained in this
9 case, you'd never done analysis of sight lines in a stadium,
10 correct?

11 A That is correct.

12 Q All right.

13 You told me -- and I was a little unclear when I was
14 reviewing your deposition transcript -- that your firm, at
15 least, had been involved in something regarding a basketball
16 arena at the University of Las Vegas, I believe?

17 A That's correct. That was a very, very limited consulting,
18 really being on a couple of conference calls just to answer
19 questions for an existing stadium remodel.

20 Q Okay.

21 And you described that facility as being a very
22 substandard facility, correct?

23 A I couldn't hear you. I'm sorry, sir?

24 Q You described that facility as being a very substandard
25 facility, correct?

1 A Yes. If memory serves, this facility was probably built
2 in the 1970s.

3 Q And one of the deficiencies you noted in that building is
4 that it didn't have sight lines above standing people,
5 correct?

6 A It didn't have adequate accessible seating, it didn't have
7 sight lines. It had a myriad of problems.

8 Q Okay.

9 One of those myriad of problems you mentioned was not
10 having sight lines over standing spectators, correct?

11 THE COURT: Not having what?

12 MR. CONNOR: I'm sorry.

13 THE COURT: Two things: First of all, lift the
14 microphone up. Second, slow down, and also articulate. Both
15 of you seem to have -- it's fair, because you both have the
16 same problem, but it doesn't help all of us. Okay. Slow
17 down, articulate. Okay?

18 MR. CONNOR: My high school debate coach called me
19 "Mumbles" for a reason. I apologize.

20 Q (By Mr. Connor) Let's move on. Let's, if we could, start
21 by looking at -- well, let's talk about sight lines over
22 standing spectators.

23 You acknowledge, do you not, that in 1994, the TAM
24 supplement published by the Department of Justice indicated
25 that stadiums were supposed to have sight lines over standing

1 spectators, correct?

2 A Yes, the 1994 TAM document says you need sight lines over
3 standing spectators, correct.

4 THE COURT: Over what?

5 THE WITNESS: Standing spectators, with no
6 specification beyond that.

7 Q (By Mr. Connor) So you were not involved in designing
8 stadiums at that time, correct?

9 A No.

10 Q All right.

11 And Mr. Willey asked you what you would have done, so
12 I'll do the same thing.

13 Would you have felt free, at that point in time, if you
14 had known the Department of Justice said that you had to
15 provide sight lines over standing spectators, would you have
16 told your client to ignore that?

17 A No, of course not.

18 Q So you would have directed your client that they should do
19 something to provide sight lines over standing spectators,
20 correct?

21 A I would have directed my client to make sure they comply
22 with the '91 standards, the '93 TAM, the '94 TAM, and the
23 *Accessible Stadiums* documents.

24 Q Okay.

25 And so the answer to my question is, you would have

1 told your clients that they had an obligation to provide
2 sight lines over standing spectators for wheelchair users,
3 correct?

4 A I would have, yes.

5 Q So you don't dispute that the Mariners had an obligation
6 to do that, correct?

7 A Correct.

8 Q Right.

9 If I understand your testimony, you are saying that
10 that obligation was satisfied by the Mariners because your
11 diagrams look like the diagrams in the *Accessible Stadiums*
12 document, correct?

13 A The only technical requirement that the Department of
14 Justice has provided is that diagram --

15 Q Okay.

16 A -- and the description of seeing over the shoulders and
17 between heads in the first row, and over heads in the second
18 row. There is no more detail provided.

19 Q Okay.

20 But it says it's supposed to provide sight lines,
21 correct?

22 A It says you're supposed to have a view of the stadium --
23 of the playing field.

24 Q Of the playing field. All right.

25 Does it specify how much of the playing field?

1 A It does not.

2 Q Okay.

3 So what would you advise your client if you were
4 telling them how much of the playing field a spectator should
5 be able to see to comply with the obligation with regard to
6 sight lines over standing spectators?

7 A All I would say is make sure that each of the accessible
8 seats has a view of the playing field.

9 Q Okay.

10 And would it have been acceptable, in your opinion, if
11 the stadium had been designed such that wheelchair users had
12 a view of the turf near the outfield wall?

13 A Yes.

14 Q That would have satisfied you?

15 A Technically, that's all that's required.

16 Q Okay. Let's step back.

17 Do you know what the requirements of the ADA are?

18 A Yes.

19 Q Okay. And what are they?

20 A Essentially, to provide a comparable access to the goods
21 and services being provided to the general public.

22 Q Okay.

23 So against that backdrop, would you have advised your
24 client that if somebody sitting in a wheelchair could only
25 see the turf at the outfield portion of the field, whereas

1 the general public could see far more of the field, that they
2 were in compliance with the requirements of the law?

3 A Probably I wouldn't know that detail, how much every seat
4 in the stadium sees versus the accessible seating.

5 Q Well, wouldn't you think that that would be something that
6 you should try to figure out when you're telling a client
7 whether they're complying with the law?

8 A I always tell my clients that the law and these
9 regulations is what is required. You, as an owner, could
10 always choose to go further than that.

11 Q Okay.

12 So just so Judge Rothstein understands what your
13 professional opinion is and what you're saying under oath, is
14 that you believe that a stadium owner would have complied
15 with the ADA, at the time that this facility was built, if
16 they had provided sight lines for wheelchair users that only
17 allowed them to see over standing spectators the turf at the
18 outfield wall?

19 A Yes, I would. And the context for that is, unlike
20 football, baseball is a sport where there's very little time
21 spent -- probably a percent or so of the entire playing time
22 of the event, people are standing. So we're still arguing
23 over a fraction of the time an event is occurring.

24 Q What's the point, then, of DOJ requirements providing for
25 sight lines over standing spectators? Is it in recognition

1 that that's an important part of the game, potentially?

2 A I think it is. I think it is. And I think, as I said, in
3 other sports, it's a much more serious issue because, like
4 football, people stand an awful lot of the time.

5 Q Have you ever done any studies to see how much of the time
6 somebody stands at a football game versus a baseball games?

7 A Just my experience watching games.

8 Q Okay. You're not offering a professional opinion on that?

9 A No.

10 Q Mr. Endelman, if we could look at your exhibits. I want
11 to talk to you about how you went about doing this again. I
12 think I understand.

13 Mr. Endelman, when you and I talked at your deposition
14 and in your report, you indicated that an associate of yours
15 had visited the Mariners' stadium, correct?

16 A That's correct, Bart Sanderson, who is our technical
17 director and senior associate.

18 Q Okay. And he had done what at the stadium?

19 A He had done what? I'm sorry, sir?

20 Q What had Mr. Sanderson done in his travels to the stadium
21 with respect to sight lines?

22 A He used the standards we discussed.

23 Q Okay.

24 The standard -- are those standards any different than
25 the standards discussed in Mr. Terry's report, in terms of

1 the measurements and the anthropometric assumptions?

2 A I don't think Mr. Terry and I disagree on the applicable
3 standards.

4 Q Okay.

5 A I think that his report does a lot of illustration of
6 things that, in my opinion, go beyond what the standards say.

7 Q Well, that's what I want to try to understand.

8 You agree with Mr. Terry's assumptions about
9 anthropometric measurements, correct?

10 A I don't agree that those are available in the documents
11 provided by the DOJ.

12 Q Okay.

13 But that's what your diagrams are based on, the same
14 anthropometric assumptions, correct?

15 A We used them because there was nothing else we could use,
16 and it was available from the *Ellerbe Becket* decision, which
17 was released when the construction of the stadium was
18 probably halfway completed.

19 Q Okay.

20 Do you know if that type of information was available
21 before the *Ellerbe Becket* decision?

22 A It may have been available in other studies in the
23 universe. And, again, I think there's a limit to how much an
24 architect needs to do legal research and research of, you
25 know, anthropometric studies, in order to do their

1 profession.

2 Q In order to design a stadium -- and let's put aside the
3 issue of accessible seating -- an architect has to make some
4 anthropometric assumptions when they're trying to establish
5 sight lines, correct?

6 A Yes.

7 Q So it's incumbent on an architect, when designing a
8 stadium, to ascertain what are appropriate anthropometric
9 measurements, correct?

10 A I don't know what data they use. They might not use the
11 data that's in the *Ellerbe Becket* report at all.

12 Q I understand that. I'm just trying to ask a more generic
13 question -- all right? -- and that is, an architect who is
14 designing a stadium would, of course, want to consider the
15 sight lines that the spectators have of the field, correct?

16 A Yes.

17 Q Okay.

18 And in order to make sure that the spectators in the
19 stadium had lines of sight to the playing field, that they
20 paid for so that they can see the game, they would have to
21 make some assumptions about the anthropometric measurements
22 as to the average spectators, correct?

23 A I believe so.

24 Q Okay. And so NBBJ must have done that, correct?

25 A I have no idea exactly what NBBJ has done.

1 Q Do you think that NBBJ designed this stadium without
2 looking at anthropometric data?

3 A I assume so. I've had no discussion with anybody at NBBJ,
4 so I don't know any details.

5 Q So it would have been within the expected burden of a
6 company designing this stadium to have sought out information
7 about anthropometric assumptions that should be made in
8 designing it, correct?

9 A I would say it's their duty to make a stadium that
10 spectators can see the field.

11 Q Okay. And the way you would go about doing that,
12 designing it, would be to use anthropometric assumptions,
13 correct?

14 A I'm assuming so. I'm not a stadium designer.

15 Q Okay. So you don't know what stadium designers do, then?

16 A I'm not a stadium designer.

17 Q Okay. So the answer is you don't know what stadium
18 designers do.

19 A I do not.

20 Q Okay.

21 So you don't know whether stadium designers would have
22 had access to anthropometric information at the time that the
23 stadium was built?

24 A I do not know what anthropometric information they use.

25 Q Okay.

1 And do you know what anthropometric information was
2 available at that time?

3 A I know one set of data, which is the stuff that is in the
4 *Ellerbe Becket* report.

5 Q Okay.

6 And that data had been available, other than in the
7 *Ellerbe Becket* report, because it had been published in a
8 number of locations, correct?

9 A I don't know that.

10 Q Okay.

11 Would you dispute it if Mr. Terry said that had been
12 part of the architectural guidebook for years?

13 A I'm not familiar with that.

14 Q Okay.

15 Your diagrams depict a -- I'm not going to use the
16 right term -- but there's, sort of, a side view of the
17 spectators, correct?

18 A Correct.

19 Q Okay.

20 Did you make any effort to ascertain the view, from the
21 locations depicted here, down to the field, what you could
22 see?

23 A It's our belief if the sight line shown in that diagram
24 clears the shoulders and heads as is required, and that the
25 sight line is headed on a downward slope, you would see the

1 field. Obviously, if it was pointing up in the air, you
2 wouldn't see the field. So if there's a downward slope to
3 it, I believe you'd see the field.

4 Q Mr. Endelman, my question was: Had you made any effort to
5 depict what portion of the field could be seen from these
6 locations for a wheelchair user?

7 A I didn't.

8 Q Okay.

9 You did review Mr. Terry's analysis of that, correct?

10 A I did.

11 Q And you saw the exhibits to his expert witness report,
12 correct?

13 A I did.

14 Q You told me that, using the assumptions that he used,
15 which were based on *Ellerbe Becket* information -- correct? --
16 that you didn't have a disagreement with what was depicted,
17 correct?

18 A I didn't have a disagreement with what?

19 Q That those accurately depicted what would be viewed, based
20 on the assumptions.

21 A Well, actually, I said I had some questions about some
22 methodology things, but on reflection, when I look at his
23 diagrams, I think he puts, if you will, a giant screen of
24 what he says you can't see, and I don't think he really shows
25 what goes between -- over the shoulders and between people's

1 heads. I'm not sure if it's really accurate.

2 Q Okay.

3 With that qualification, you understand and don't
4 disagree with what he did, correct?

5 A I understand what he did.

6 Q Okay. And I'm just asking you.

7 What he did is in keeping with what he described, which
8 was using the *Ellerbe Becket* data, correct?

9 A I believe that's what he said in his report.

10 Q Okay. And you don't have any reason to dispute that?

11 A No.

12 Q Okay.

13 When I deposed you, I asked you -- and I understand the
14 qualification you're making now, that it's not a wall,
15 necessarily, that's depicted, but I asked if the view for the
16 wheelchair users were the same or comparable to the
17 non-disabled spectators, and you told me you agreed they were
18 not, correct?

19 THE COURT: Wait. Say that again.

20 MR. CONNOR: I'd like to reword it, because this is
21 important. I can get Mr. Endelman's deposition out, but I
22 don't think he'll disagree with me.

23 Q (By Mr. Connor) You agreed with me that, looking at
24 Mr. Terry's exhibits and assuming his assumption that there
25 was the wall, as you described it, that the views for the

1 wheelchair users were not comparable to the views of the
2 non-disabled spectators one row in front of them, correct?

3 A I said that, but I misspoke about what I was trying to
4 say. What I was trying to say, yes, it is clear that two
5 side-by-side photographs look different, but, in my opinion,
6 both of them meet the requirements of the *Accessible Stadiums*
7 document.

8 Q Okay. So just, again, to step back.

9 Your basis for saying that is that you've got pictures
10 that show the sideways view, and they have lines that look
11 like the lines in the diagram for the *Accessible Stadiums*
12 publication, correct?

13 A What I was trying to say is that both versions have a view
14 of the field.

15 Q But you can't tell me how much of a view of the field is
16 seen, right?

17 A No.

18 Q You didn't even try to analyze that, did you?

19 A No, because there's no detail in how much a view of the
20 field you need to have.

21 Q Okay. So just to make sure the judge is clear.

22 You did not try to analyze how much of a view of the
23 field wheelchair users had over standing spectators, did you?

24 A It met the diagram --

25 Q Please answer my question.

1 A I'm going to say the same answer again and again because
2 that's what my opinion is.

3 If you ask me the question five times, I'll give you the
4 same answer.

5 THE COURT: Let him finish his answer, and then you
6 can ask him another question.

7 MR. CONNOR: Okay.

8 THE COURT: You can't both talk at the same time --

9 MR. CONNOR: I'm sorry.

10 THE COURT: -- because our court reporter can't take
11 it down when you both talk at the same time.

12 Okay. Do you want to ask your question again?

13 Q (By Mr. Connor) Mr. Endelman, you did not do an analysis
14 of how much of the field could be seen by a wheelchair user
15 over standing spectators in front of them, did you?

16 A We did no quantification of that at all.

17 Q Okay.

18 And putting aside quantification in terms of
19 percentages, you didn't even do an analysis of what parts of
20 the field could be seen by a wheelchair user, correct?

21 A We did not.

22 Q All right.

23 You have no reason to disbelieve Mr. Terry's analysis
24 that, at least at times, portions of the infield would be
25 obscured for wheelchair users that would not be obscured for

1 standing spectators, correct?

2 A Some of his photos depict that, apparently.

3 Q Mr. Endelman, your report, and I think your testimony
4 today, expressed some frustration that the Department of
5 Justice did not and has not promulgated anthropometric data,
6 correct?

7 A They have not.

8 Q I may be repeating something discussed, to some extent,
9 but an architect had an obligation to fill that gap, right?

10 A I'm not sure what you mean "by fill that gap."

11 Q Well, absent anthropometric data, an architect had an
12 obligation to try to figure out how to satisfy the
13 requirement the Department of Justice was specifying, which
14 was to see the playing field, correct?

15 A The architect needs to provide a view of the field, yes.

16 Q Okay.

17 And in order to do that, that they would have had to
18 have found anthropometric information to design a stadium
19 appropriately, correct?

20 A It seems that way to me, but, again, I don't know the
21 details of how a stadium designer goes about designing the
22 shape of the bowl of a stadium and accessible seating.

23 Q Mr. Endelman, you and I talked a bit about the scoreboard
24 during your deposition. Do you remember that?

25 A I do.

1 Q Okay.

2 And do you believe that the views of the wheelchair
3 users are comparable to the views of non-wheelchair users
4 with respect to the scoreboard?

5 A I think there are adequate locations and scoreboards and
6 monitors and displays that enable people to keep track of
7 scores and other information about the game.

8 Q Okay.

9 Do you know how much the Mariners spent on that main
10 scoreboard that they have?

11 A I don't know how much narrative they put in there for
12 that.

13 Q Would it surprise you if their witness testified that it
14 was somewhere between \$10- and \$15 million?

15 A I'm sorry. I don't understand. You said -- you asked
16 me --

17 Q I asked you -- first of all, I asked you -- and,
18 understandably, you don't -- if you knew how much the
19 Mariners spent on that scoreboard.

20 A I misunderstood your question completely. I thought you
21 were asking how much data was displayed on the screen.

22 Q I was probably mumbling. I meant to ask you if you know
23 how much they spend on that.

24 A I have no idea.

25 Q Okay.

1 Would it surprise you if you heard that a witness
2 testified between \$10- and \$15 million?

3 A I don't know the price of that equipment.

4 Q You agreed with me in your deposition that a scoreboard is
5 something that falls within the ambit of what's meant by
6 "goods and services" within the meaning of the ADA, correct?

7 A Correct.

8 Q Okay.

9 And so the ADA requires, generally, that wheelchair
10 users are provided the same goods and services that
11 non-wheelchair users are provided, correct?

12 A They don't use the word "same." It's "equivalent
13 services."

14 MR. CONNOR: Your Honor, if I could take a break now?
15 I don't think I'll have too much more time, but I have a
16 break in the subject of my questioning, and it will allow me
17 to talk to Mr. Terry about the pictures that have been
18 produced.

19 THE COURT: Okay. About how long would you like?
20 And are you thinking that we should -- you would need enough
21 so that we would just go right into the lunch hour, or do you
22 want to come back? Usually we go at one o'clock for the
23 lunch hour, but we can go at 12:00 if you think your break is
24 going to take that long. Otherwise, we can come back and
25 finish.

1 MR. CONNOR: Your Honor, all I need right now is a
2 15-minute break, I think, and I suspect that I will be able
3 to finish the questioning within a half an hour of that
4 break.

5 THE COURT: Perfect. We'll take our morning
6 15-minute recess now, and if you need more time, we can add
7 on to that.

8 MR. CONNOR: Okay.

9 THE COURT: But then we will resume and try to finish
10 with the witness.

11 You may step down. The court will be in recess.

12 (Court in recess.)

13 | THE COURT: Whenever you're ready, counsel.

14 | MR. CONNOR: Thank you, Your Honor.

15 Q (By Mr. Connor) Mr. Endelman, Mr. Willey asked you about
16 the *Ellerbe Becket* consent decree. Do you recollect that?

17 A Yes.

18 Q Okay.

19 I appreciate you're not a lawyer, but since he asked
20 you about it, I'll ask you a few further questions.

21 Do you know whether any of the stadiums or stadium
22 owners are actually party to that lawsuit?

23 A I don't know that.

24 Q Okay.

25 Ellerbe Becket was just the design firm, correct?

1 A Correct.

2 Q Okay.

3 So you don't know what, if anything, the Department of
4 Justice required with respect to the stadiums that had been
5 constructed?

6 A I don't know about the second stadium constructed -- I'm
7 not sure what you're saying.

8 Q The *Ellerbe Becket* consent order just pertained to the
9 directive to the design firm, correct?

10 A Correct.

11 MR. CONNOR: Derik, can we pull up the pictures we
12 got this morning? I'd like to see the ones with the concrete
13 platform. Which number is that?

14 MR. TERASAKI: This is D-23.

15 Q (By Mr. Connor) Mr. Endelman, what's up on the screen in
16 front of you is the picture that's Exhibit D-23, and you
17 talked with Mr. Willey about that a little bit.

18 Because I think we've used slightly confusing verbiage
19 throughout this case, and it's certainly not your fault, but
20 this concrete here, is that what you described as a platform?

21 A Yes. It's a structural. It's a structural platform.

22 Q Okay.

23 But there are nonstructural platforms in a couple of
24 the sections that you discussed with Mr. Willey, correct?

25 A Correct.

1 Q Okay.

2 So I wanted to ask you about this: Could you tell
3 me -- as far as you know, was this how the stadium was
4 constructed, or is this something that was added?

5 A No, this was how it was constructed.

6 Q Could I ask you what the effect of having constructed that
7 platform out further, like that, would have been in terms of
8 sight lines for wheelchair viewers?

9 A I think that it would cause a problem in the seats in the
10 row in front of the platform in terms of the spacing for
11 non-accessible seating.

12 Q Okay. I was ask- -- I was concerned about wheelchair
13 users, actually.

14 So I'm wondering, do you know what the effect of moving
15 that platform out further would have been for the views of
16 wheelchair users?

17 A It's all -- the view of the wheelchair users is all
18 governed where the heads of the people are in front. So if
19 you move the platform out further, the chairs in front move
20 out further, and the standing spectators would move out
21 further with it. It all would move together, I think.

22 Q Well -- and that's a fair comment.

23 But let's assume you didn't move these -- you just
24 eliminated that row of seats. Okay? Wouldn't the effect of
25 that be to give a better view for wheelchair users?

1 A Well, certainly, because the first row, then, would be
2 really the second row in front, which is lower than this;
3 that's true, eliminate the entire row of seats.

4 Q Right.

5 And, in fact -- so it could have been constructed in
6 that manner, as far as you know, and then provided better
7 views for the wheelchair users, correct?

8 A Well, there's other criteria for designing a stadium,
9 which is providing the amount of seats and other things that
10 the client wants in the stadium. So if you go and eliminate
11 many hundreds of seats, that's a separate programmatic
12 problem.

13 Q What it is is it's a financial problem for the ownership,
14 correct?

15 A I'm saying --

16 MR. WILLEY: This witness has no knowledge or
17 foundation. He's testified he wasn't the stadium architect,
18 and he wasn't involved in this stadium.

19 THE COURT: Do you think it might be general
20 knowledge that if you took a row of seats away, it would cost
21 something?

22 MR. WILLEY: I'm wondering why it's a question for
23 this witness, then.

24 MR. CONNOR: Mr. Endelman explained that you might
25 not be able to do that, and I was trying to understand why

1 you couldn't do that, and I thought what he was saying was
2 because you would be eliminating a row of seats, and that
3 would be a problem with the owner.

4 MR. WILLEY: Mr. Endelman has not testified and has
5 no opinion with respect to remediation.

6 THE COURT: I don't even understand what the question
7 is.

8 MR. CONNOR: Your Honor, I would just -- I would like
9 to establish that there was nothing that precluded -- and
10 this is not remediation. This is whether the owners of this
11 stadium fulfilled their obligations when they built it, and
12 I'd like to establish --

13 THE COURT: He's already testified that, in his
14 opinion, they fulfilled their obligation because they met the
15 requirements of the *Accessible Stadiums* manual picture,
16 design, whatever it is.

17 MR. CONNOR: And what I would like to explore
18 slightly further with him is, because if he's in error about
19 that because his analysis of what was required is not
20 correct, I wanted to ascertain whether the stadium could have
21 been built such that the views of the wheelchair users would
22 have been better than they are.

23 THE COURT: Well, go ahead and ask.

24 MR. CONNOR: That's what I asked. I asked
25 Mr. Endelman -- and that's what I meant to ask, if I didn't.

1 Q (By Mr. Connor) Mr. Endelman, as far as you know, there
2 was nothing that precluded this platform from having been
3 extended out, other than a lack of desire to move the seats
4 in front, correct?

5 A I think that's correct.

6 Q Okay.

7 And as you said, that would have improved the view for
8 wheelchair users over standing spectators, correct?

9 A Correct.

10 Q Okay.

11 Mr. Endelman, let's talk about where the accessible
12 seating is located in the stadium. I wanted to talk to you,
13 first of all --

14 MR. CONNOR: Derik, can we look at 191?

15 Q (By Mr. Connor) You had testified, when Mr. Willey was
16 asking you questions, that you thought that the Mariners had
17 satisfied the obligations of the ADA and the DOJ with respect
18 to the dispersal of accessible seating, correct?

19 A Correct.

20 Q And I heard you say that you felt that they had done so,
21 in part, because they put seating near places of egress,
22 correct?

23 A I went further than just egress. I'm saying that there's
24 adequate dispersal around the stadium as a whole, both in
25 terms of horizontal and vertical dispersion.

1 Q Okay.

2 Do you know how many seats are located in this lower
3 bowl of the stadium?

4 A Accessible seats?

5 Q No. Seats in total.

6 A No, I don't.

7 Q Okay.

8 So you didn't make an effort to ascertain how many
9 seats there were in the lower tier of the stadium?

10 A No.

11 Q Okay.

12 Would it surprise you if I told you that a witness
13 testified that it was approximately 20,000 or more?

14 THE COURT: Assume that he's giving you the
15 correct --

16 Q (By Mr. Connor) Yeah, assuming that there are, at least,
17 20,000 seats in that lower section of the stadium, can you
18 tell me how many are located in front of the back row?

19 THE COURT: In front of the --

20 MR. CONNOR: In front of the back row of the first
21 tier.

22 Q (By Mr. Connor) Other than the seats at the back row, how
23 many accessible seats do you understand there are in that
24 lower bowl of the stadium?

25 A I believe there's 16.

1 Q Okay.

2 And are those accessible seats, or are they accessible
3 and companion seats?

4 A They're accessible seats.

5 I'm sorry. Can you clarify your question, please?

6 Q Yes.

7 There's a distinction between accessible seats and
8 companion seats, correct?

9 A Correct.

10 Q Okay.

11 How many accessible seats do you understand are located
12 in T-Mobile stadium below the back row of the first level?

13 A Below the back row of the first level?

14 THE COURT: Do you mean the ones in the first row?

15 MR. CONNOR: Correct.

16 THE COURT: Why don't you just say the ones in the
17 front row.

18 A I believe there are 16.

19 Q (By Mr. Connor) Sixteen accessible and 16 companion, or
20 16 accessible and companion, total?

21 A I think it's the combination of the two.

22 Q Okay. All right.

23 What percentage of 20,000 would eight seats be, do you
24 know?

25 MR. WILLEY: Excuse me, Your Honor. I believe

1 there's a misstatement in the record with regard to the
2 number of seats in the lower bowl. I think Mr. Connor is
3 testifying to an erroneous number.

4 THE COURT: Do you know the correct number?

5 MR. WILLEY: I believe it's more in the order of 10-
6 or 11,000, Your Honor.

7 THE COURT: All right. Somebody, before the end of
8 this case, find that out. This is not something we need to
9 argue about.

10 MR. CONNOR: Okay. All right.

11 THE COURT: You just have to be sure you're
12 including -- you're all talking about the same bowl and the
13 same amount of seating.

14 The fact of the matter is, I can -- you can then tell me,
15 in closing, what eight seats comprise of --

16 MR. CONNOR: Okay. Okay.

17 THE COURT: -- whether it should be eight or
18 sixteen --

19 MR. CONNOR: Okay.

20 THE COURT: -- is another question.

21 MR. CONNOR: Okay.

22 THE COURT: -- but what percentage, and you don't
23 have to ask this witness, because he shouldn't have to figure
24 it out on the stand.

25 We're talking about eight seats out of X. X is either

1 20,000 or 15,000 or 10,000.

2 Q (By Mr. Connor) Mr. Endelman, do you know whether there
3 is access to the seats in the front row behind the home
4 plate?

5 A Yes, there are two areas where you can get to the front
6 row, from the Diamond Club amenity space, and the other two
7 have steps.

8 Q Okay.

9 A But I would like to clarify something in your previous
10 question.

11 You're excluding, from the counts of the seats in the 100
12 section of the stadium, the myriad of seats in the last row
13 of the 100 section of the stadium. So there's way more than
14 16 seats, or whatever the exact number is, in the first row.

15 Q Yeah. And if I said that, I didn't mean to say that. I
16 meant to ask you how many seats there were in front of the
17 seats at the back of the first tier.

18 Do you know whether all of the space that is accessible
19 from the existing vomitories down at the front there has been
20 used for accessible seating, that could be?

21 A I believe so. It goes from dugout to dugout.

22 Q Your understanding is there are accessible seats all the
23 way from dugout to dugout?

24 A Yes.

25 Q So you think that there are only 16 seats between the

1 dugouts?

2 A In the first row.

3 Q Okay. Are you certain of that?

4 A I'm not a hundred percent sure of the exact number 16, but
5 all the accessible seats are in the first row from dugout to
6 dugout.

7 Q Okay.

8 If a Mariners representative testified differently here
9 in the courtroom, you wouldn't disagree with that?

10 A I wouldn't dispute that.

11 Q Okay.

12 The ADA regulations promulgated by the Department of
13 Justice in 4.33.3, which is cited in your report, required
14 that people with physical disabilities are supposed to be
15 given a choice of admission prices in lines of sight
16 comparable to those of members of the general public,
17 correct?

18 A Correct.

19 Q Do you think that the line of sight of somebody sitting at
20 the back row of the stadium on the first tier -- and let's
21 just pick a section. Sorry. Could you clear this for me?

22 Do you think the line of sight of somebody sitting
23 here, and we'll pick Section 133, would be the same as
24 somebody sitting in the fifth row in that same section?

25 A I think when you're comparing lines of sight, you can't go

1 seat-by-seat in the stadium, or you'd have to have accessible
2 seating in every single row of the stadium, if you were going
3 on a microscopic, granular scale.

4 I think the intent is that there are, clearly, tiers of
5 seating, and I think there's a wide range of price points --
6 a very wide range of price points for those things, so I
7 think it complies.

8 Q Okay. I just want to focus on the comparability of the
9 lines of sight. Okay? And if you could answer my question.

10 Do you think that the line of sight for somebody
11 sitting in the back row of Section 133 in the stadium would
12 be the same as the line of sight of somebody sitting in the
13 fifth row of that section?

14 A That is not what is defined by the Department of Justice.
15 The Department of Justice says if you meet that diagram, you
16 provided a view to the playing field --

17 Q Mr. Endelman --

18 A -- and those seats provided a view to the playing field.

19 Q Mr. Endelman, could you answer my question?

20 A I can't answer it with the terms you're using. It's not
21 comparable in the definition that the DOJ has provided.

22 Q Mr. Endelman, do you -- well, let me ask it this way: If
23 you had a choice of sitting in the fifth row on the first
24 level or the 41st row on the first level, in the same
25 section, do you have an idea which seat you might pick?

1 A I might take the 41st, to be honest with you. And I'm not
2 saying that to be contrary. I think there's advantages to
3 being higher up and getting a better view of the overall
4 action on the field than being closer to the field. That's
5 my personal opinion. And that's what makes horse racing.
6 People like different seats.

7 Q Okay. You're aware that the Mariners have made finer and
8 finer pricing distinctions in terms of the location of seats
9 as the years have gone on, correct?

10 A On a broad level. I have no other details about pricing.

11 Q Okay.

12 You would agree that, generally speaking -- well, do
13 you understand that the seats priced closer to the front of
14 the stadium are priced at a higher price than the seats
15 further back?

16 A I understand that.

17 Q Okay.

18 And the reason for that is, despite maybe your personal
19 preference, most members of the public -- supply and demand
20 suggest -- prefer to be closer to the stadium [sic] than
21 further back, correct?

22 A Correct.

23 Q You acknowledge that people using wheelchairs do not have
24 an option to sit on the first level, other than at the rear
25 of the stadium in those eight seats in front, correct?

1 A Sitting in the rear of the first level is not in the rear
2 of the stadium. It's probably in about the front -- 40
3 percent of the stadium.

4 Q Let's talk about that.

5 From the standpoint of ADA requirements, in terms of
6 vertical dispersal, do you believe that if there was a
7 stadium or a facility that was built that was 41 rows high,
8 that it would be acceptable to place all of the disabled
9 seating at the top row of that stadium?

10 A Yes. The technical assistance manual, it says that the
11 seating can be provided in the front row, or it can be
12 provided in the rear row, with sufficient elevation to
13 provide sight lines to the field. It says that. It says
14 they can be clustered.

15 Q They can be clustered, and that's because there is a
16 concern in the regulations about making sure that wheelchair
17 users are integrated in the facility, correct? That they're
18 not ghettoized in some portion of the facility, right?

19 A Correct.

20 Q Okay.

21 A It's my opinion, as I said before, that there's adequate
22 vertical and horizontal dispersion here.

23 Q Okay. And I'm just trying to explore that. That's why
24 I'm asking you that.

25 If you had a client who had a stadium that was only 40

1 rows high, would you think it would be acceptable to locate
2 all of the accessible seating at the rear of that stadium?
3 Would that satisfy the vertical-dispersal obligations under
4 the ADA?

5 A Under the ADA, it probably does. Under the building code,
6 it might not, the current building code.

7 Q You said something about how the vertical dispersal, you
8 can put the wheelchair locations at the back of a level or at
9 the front level, correct?

10 A Correct.

11 Q So do you think there's an obligation on the part of the
12 Mariners to put wheelchair seating at the front?

13 A I don't think there's an obligation. There's an
14 obligation where you provide an accessible route, that you
15 can provide wheelchair seating there. If there's not an
16 accessible route, you don't have to provide the seats there.

17 Q Well, let's talk about that.

18 In your opinion, would it have been permissible for the
19 Mariners to have designed a stadium that provided no
20 accessible routes, meaning wheelchair-accessible routes to
21 the front of the stadium, and then only located seating at
22 the back of the stadium? Would that have satisfied the
23 requirements of equal access for people with disabilities?

24 A If there were no accessible routes to the front of the
25 stadium, I think it probably would comply.

1 Q But at the time the stadium was designed, would it have
2 been acceptable for a stadium to have been designed such that
3 there were no accessible routes to the front of the stadium?

4 A I don't know that they have to do that.

5 Again, I don't think that people designing stadiums
6 put obstacles intentionally, from providing accessible
7 seating. They do the best they can with a very complex
8 arrangement of trying to design a stadium.

9 THE COURT: What's the relevance of the question
10 you're asking?

11 MR. CONNOR: Your Honor, I'm sorry if the context
12 isn't clear.

13 Our belief is this stadium was not designed to provide
14 adequate vertical dispersal. Okay? And since it wasn't, and
15 they had an obligation to because it was not an existing
16 stadium, it was a new facility, the stadium is in violation
17 of the ADA. So that's what I'm asking. This stadium could
18 have been designed such that there was more access toward the
19 front, and it wasn't, and we believe that violated the
20 vertical-dispersal requirements.

21 What they did was -- they had limited access -- they put
22 in this year, and after the suit was filed, a token couple of
23 seats in the front, but otherwise put the wheelchairs at the
24 back of the first level.

25 THE COURT: I think I'm getting a preview of your

1 closing argument, counsel, and I appreciate that.

2 I don't know that it's either necessary or germane for the
3 court to give a ruling on whether the stadium, as a whole,
4 conforms to the ADA. Is that what you're asking the court to
5 do?

6 MR. CONNOR: With respect to these issues that we're
7 talking about, yes.

8 THE COURT: With respect to the issues you're talking
9 about?

10 MR. CONNOR: Right.

11 THE COURT: But I don't see that we need to go into
12 the whole design of the stadium. If you think it's valuable
13 and you're going to argue from it, then go ahead and ask.

14 MR. CONNOR: Okay. Thank you. And I won't belabor
15 it.

16 Q (By Mr. Connor) Mr. Endelman, let me ask you this: Are
17 you familiar with the DOJ standard "structural
18 impracticability"?

19 A What structural impracticability means?

20 Q Yes.

21 A Yes.

22 Q And how does the Department of Justice define structural
23 impracticability?

24 A Let me see if I can get a good version of that.

25 Something that is not technically feasible because of

1 structural constraints.

2 Q Is that what it says?

3 MR. WILLEY: Your Honor, I believe we're moving into
4 the realm of remedy issues. Structural impracticability has
5 nothing to do with liability determination. It's a
6 remediation issue. It's a defense issue. In other words,
7 it's a defense to a proposed remediation. It has nothing to
8 do with the liability issues presented to you.

9 THE COURT: Well, he's got a witness on the stand who
10 may be able to talk about it --

11 MR. WILLEY: But this witness hasn't opined upon that
12 issue, Your Honor.

13 MR. CONNOR: I asked him if he knew what that was and
14 what the standard was for structural impracticability.

15 THE COURT: He's given you his version. Go ahead.

16 Q (By Mr. Connor) So putting aside how the stadium might
17 have been built differently, Mr. Endelman, it was built such
18 that there is accessible egress down to that front area of
19 the stadium by the home plate area, correct?

20 A Correct.

21 Q Okay.

22 And as far as you're concerned, do the Mariners have an
23 obligation to put as much seating down there, to satisfy the
24 vertical-distribution obligations, as they can?

25 THE COURT: Counsel, repeat your question, and try to

1 say it more clearly, please.

2 MR. CONNOR: Okay.

3 Q (By Mr. Connor) Mr. Endelman, could you -- I'll read.

4 4.33.3 says that wheelchair users or people with disabilities
5 are supposed to be provided lines of sight comparable to
6 those for members of the general public, correct?

7 A Yes.

8 Q Okay.

9 And it says that -- and I think this is what you were
10 mentioning when you were talking with Mr. Willey and with me
11 just a minute ago -- that accessible viewing positions may be
12 clustered for areas having more than a five percent grade,
13 correct?

14 A That's referring to a bleacher exception.

15 Q A what exception?

16 A A bleacher exception.

17 Q Oh, okay. So that exception doesn't apply to a stadium
18 like this, the types of seats in this stadium?

19 A It's an interesting question, because bleachers have -- it
20 doesn't have a defined meaning under the standards. There's
21 no definition of "bleacher" in the ADA standards. There's
22 bleachers that you and I know from having been in high school
23 and college, and, generally, what we know as bleachers. So
24 that's the way I've taken that to mean.

25 MR. CONNOR: Mr. Endelman, I think that's all I have.

1 Let me talk to my co-counsel for a second.

2 That is all I have, Mr. Endelman. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. WILLEY:

5 Q Just a couple of questions for you, Mr. Endelman.

6 Mr. Connor asked you a hypothetical about whether or
7 not a particular view of the field or a particular percentage
8 of a view of the field complied with the ADA. Do you recall
9 that?

10 A Yes.

11 Q Do you have an understanding as to whether or not the DOJ
12 has any requirement that mandates a particular percentage
13 view of the field?

14 A There's absolutely no such requirement specified.

15 Q Mr. Connor had asked you, I think, a question about the
16 TAM supplement from 1994. Do you recall that?

17 A Yes.

18 MR. WILLEY: Rondi, can you pull that up on the
19 screen?

20 Q (By Mr. Willey) Here, this document is a 1993 reg, ADA
21 standard with the 1994 TAM -- excuse me. It's the 1993 TAM
22 with the 1994 TAM supplement shown in yellow. Do you see
23 that yellow is what got added in in 1994?

24 A Yes.

25 Q Do you see there it says, "In assembly areas where

1 spectators can be expected to stand during the event or show
2 being viewed, the wheelchair locations must provide lines of
3 sight over spectators who stand, period." Do you see that?

4 A Yes.

5 Q And then language was then modified in the 1996 Accessible
6 *Stadiums* document, right?

7 A Correct.

8 Q Okay.

9 When the TAM was published in '94, it offered examples
10 of how you might accomplish this, right?

11 A Correct.

12 Q And that is in the next sentence. "This can be
13 accomplished in many ways, including placing wheelchair
14 locations at the front of a seating section or by providing
15 sufficient additional elevation for wheelchair locations
16 placed at the rear of seating sections to allow those
17 spectators to see over the spectators who stand in front of
18 them." Do you see that?

19 A Correct.

20 Q And do you have an understanding of whether or not either
21 one of those things was done at the stadium?

22 A Yes.

23 Q What is your opinion?

24 A I believe it complies, because that's exactly how the
25 stadium was constructed, with platforms at the rear of

1 seating sections, and the front-row seats in the stadium,
2 whether they were originally there or added later, have an
3 accessible route, and they're in the front of the section,
4 comporting with this. If you note, it says "in the front or
5 in the rear." It doesn't say "and in the rear."

6 Q You had testified with Mr. Connor that the accessible
7 seats that are in the front row are between the dugouts; is
8 that correct?

9 A Yes.

10 Q Do you know if every seat in the front row is accessible,
11 or some portion of them is?

12 A I believe all the seats in the front row now are
13 accessible seats. I mean, accessible seats and companion
14 seats.

15 Q Do you know how many seats are in the front row between
16 the dugouts?

17 A I don't know the number.

18 Q Have you seen those?

19 A Yes.

20 Q Have you ever testified in court before?

21 A I've not been in court until this day. I've been deposed,
22 obviously, a number of times in some of those other cases.
23 This is the first time in court.

24 Q When you were full-time employed, what portion of your
25 practice was compliance, proactive efforts with clients, and

1 what portion was doing expert witness work?

2 A Oh, probably less than one percent.

3 THE COURT: Less than one percent of what?

4 THE WITNESS: Doing testimony as an expert witness.

5 Q (By Mr. Willey) And the remainder was the compliance
6 work, plan review, field surveys, et cetera?

7 A Correct.

8 MR. WILLEY: I think those are all my questions.

9 Just let me check something.

10 THE COURT: Anything, Mr. Connor?

11 MR. CONNOR: One second, if I could, Your Honor.

12 RECROSS-EXAMINATION

13 BY MR. CONNOR:

14 Q I thought you told me that you didn't know whether all the
15 seats in the front row between the dugouts were accessible
16 seats. Isn't that what you told me?

17 A I guess by "accessible seats," I meant the actual
18 wheelchair user's space, you know, as opposed to wheelchair
19 seats and companion seats.

20 THE COURT: Counsel, we can ascertain that, can't we,
21 as a matter of fact?

22 MR. CONNOR: Well, I want to make sure the record
23 isn't compromised or something.

24 THE COURT: Nothing is compromised. There's got to
25 be an answer to how many seats in the front row are

1 wheelchair accessible, how many are companion, and how many
2 of them are something else.

3 MR. CONNOR: I have nothing further, Your Honor.

4 THE COURT: Anything further, Mr. Willey?

5 MR. WILLEY: Nothing.

6 THE COURT: You may step down.

7 MR. CONNOR: Your Honor, at this time, I believe
8 solely for the purpose of talking about how many accessible
9 seats there are in the front row, I'd like to put Mr. Terry
10 back on the stand.

11 THE COURT: Is that the only reason you're putting
12 him on?

13 MR. CONNOR: I think so.

14 MR. WILLEY: Your Honor, we can stipulate to that
15 number.

16 THE COURT: I really don't think you need to put
17 Mr. Terry on for that. Can't you stipulate?

18 MR. CONNOR: My concern is Mr. Willey just had -- the
19 witness testified that all the space is taken by accessible
20 seating.

21 THE COURT: He also testified that he wasn't sure.
22 Believe me, the case isn't going to turn on --

23 MR. CONNOR: Okay.

24 THE COURT: Does somebody know? Does anybody know?

25 MR. WILLEY: We'll provide a number, and we'll

1 stipulate to it. I don't think there's any confusion
2 factually.

3 MR. CONNOR: Your Honor, I would like to call
4 Mr. Terry for one other question.

5 THE COURT: Sure. I remind you you are still under
6 oath, Mr. Terry, having been sworn earlier. You may resume
7 the stand.

8 JAMES TERRY, HAVING BEEN PREVIOUSLY SWORN,
9 TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. CONNOR:

12 Q Mr. Terry, you're familiar with the *Accessible Stadiums*
13 guide, correct?

14 A Yes.

15 Q And that's Exhibit D-2, the picture here.

16 A Yes.

17 Q Okay.

18 Does this picture, in your mind, depict something
19 different than what's depicted by the measurements taken by
20 Mr. Endelman --

21 A Definitely.

22 Q -- with respect to lines of sight?

23 How do they differ?

24 A First of all, if you -- can I make another comment that's
25 kind of off of that?

1 This figure doesn't define it. It illustrates the
2 requirement. But the key thing that it illustrates is that
3 the sight line from the wheelchair user, as it goes towards
4 the field, when you compare it to the sight line for the
5 member of the general public, these lines actually -- and can
6 you remove that now? Those lines -- you can see in this
7 figure -- can you zoom in on it? It makes it a little bit
8 easier to see. Those lines actually converge.

9 The wheelchair user can see at least as much,
10 substantially equivalent to or greater than a portion
11 of the field.

12 So what it's showing by these lines not being parallel and
13 by the wheelchairs user's line of sight not being further
14 out, this indicates that the wheelchair user can see at least
15 as much or more -- in this diagram -- can see more of the
16 field than the standing spectators can or can the seated
17 spectators, and that illustrates that the requirement to
18 provide comparable lines of sight is being met in this
19 illustration.

20 Q Okay.

21 Can we look at Mr. Endelman's illustrations. What do
22 the lines there reflect?

23 A Can we zoom in on one of those?

24 Q I think so.

25 A You'll notice that, in this case, the wheelchair users

1 line of sight -- I'm trying to follow that carefully -- and
2 the line of sight -- and I'm going to draw it right above it,
3 just like I did the one above -- and the line of sight of the
4 member of the general public actually diverge. So what that
5 is showing is exactly what my photographs showed with the CAD
6 drawings and the colored portions of the field.

7 What my drawings show is exactly what these drawings show;
8 that the wheelchair user cannot see as low on the field
9 because of the way the lines are going. They're diverging.
10 So the wheelchair user can see part of the field; they just
11 can't see a comparable part of the field.

12 And 4.33.3 and all of the technical documents that we've
13 quoted that were in effect at the time the stadium was
14 designed, all of them require comparable lines of sight, not
15 just lines of sight that see the field.

16 Q Okay.

17 And, Mr. Terry, obviously these diagrams do not
18 actually depict what is seen from those locations, correct?

19 A That's correct.

20 MR. CONNOR: All right. I think that's all I have.
21 Thank you.

22 MR. WILLEY: Can I go back to the exact same ones?

23 CROSS-EXAMINATION

24 BY MR. WILLEY:

25 Q Mr. Terry, when you're looking at the *Accessible Stadiums*

1 document, is that what's seen on the left side of the screen
2 here?

3 A Yes.

4 Q Do you know what percentage of the field the wheelchair
5 user can see in this diagram?

6 A The percentage is not shown in the figure, and it's not
7 specified in any part of the DOJ technical assistance
8 materials, because -- I have to tell the whole truth --
9 because the portion of the field that can be seen by members
10 of the general public at different portions of the stadium
11 are different.

12 So if you're in the top row, you, as a member of the
13 general public, you can't see all of the field like somebody
14 sitting on the first row or the tenth row or any other
15 portion. There are slight differences in what you can see.
16 What's comparable is what is required.

17 Q Understood.

18 And do you know, in looking at this ADA document that's
19 in the *Accessible Stadiums*, the person sitting in the row
20 immediately in front of the wheelchair user, do you know what
21 portion of the field that person can see?

22 A I do not.

23 Q How about the person two rows in front?

24 A It's not shown in the drawing. This is a drawing to
25 illustrate the concept.

1 Q I understand.

2 There's no specification, anywhere in here, about that,
3 is there?

4 A Not for percentages of field.

5 Q When you look at the drawing that Mr. Endelman did, does
6 it tell you what percentage of the field the person in the
7 wheelchair can see?

8 A No.

9 Q How about the person in front of them?

10 A No.

11 Q You had talked with Mr. Connor about the way in which the
12 sight lines were converging or not converging?

13 A Yes.

14 Q Do you know where the playing surface is, vis-à-vis the
15 persons depicted in *Accessible Stadiums*?

16 A No.

17 Q That would matter, wouldn't it, in terms of where the
18 sight line was going?

19 A If we were in a stadium as compared to a flat-floored
20 auditorium with a raised stage, it does make a difference
21 that you be able to see a comparable portion. The
22 assumption, because the sight lines are drawn from one side
23 to the other and they're looking down, the assumption is that
24 you're raised above the field, and so the obligation, then,
25 is comparability for being raised above the field.

1 Q Do you remember when we were talking yesterday and we
2 looked at one of your exhibits, and it showed that the person
3 sitting in Row 11 had a lesser view than the person sitting
4 in Row 41?

5 A A lesser view of what?

6 Q Of the field, lesser percentage of the field.

7 A Of the total field?

8 Q Yes.

9 A Yes.

10 Q And that may be because the person sitting here in
11 Mr. Endelman's diagram, that person sitting may have a lesser
12 view than the person in the wheelchair, right?

13 A Of the field?

14 Q Yeah, of the total field.

15 A Possibly a minuscule difference.

16 Q But it's possible, right?

17 A Yes.

18 Q Just like the exhibit we looked at yesterday with you?

19 A Yes.

20 THE COURT: Just like what?

21 Q (By Mr. Willey) The exhibit we looked at yesterday with
22 you, where the person sitting in Row 11 had a lesser view of
23 the whole field than the person in Row 41.

24 A The closer you get to the field, because of the reduced
25 portion of the field, you're seeing -- you're looking at it

1 more horizontally, the lower percentage of the whole field
2 that you get. It does not -- in the design of the Mariners'
3 stadium, it does not affect -- because they designed it
4 correctly, it does not affect the percentage of the infield
5 that you can see.

6 Q What portion of your testimony is expert witness work?

7 THE COURT: Is what?

8 MR. WILLEY: Expert witness work, or expert
9 consulting.

10 A I've been doing this for about 25 years. It's -- in terms
11 of cases that go to deposition or trial, it's probably been
12 less than two percent.

13 MR. WILLEY: Thank you. That's all I have.

14 THE COURT: Any other questions?

15 MR. CONNOR: No, Your Honor.

16 THE COURT: You may step down, probably for the last
17 time, Mr. Terry.

18 Well, counsel, you turned out to be excellent predictors,
19 and we have now, as I understand it, finished the testimonial
20 portion of the case, which means that you can, in fact, give
21 me your closing arguments this afternoon, right?

22 Do you want to take a lunch hour now, and take a long
23 lunch hour so you can prepare, or what?

24 MR. WILLEY: Your Honor, Mr. Connor and I had both, I
25 think, understood that we would be, no matter what was

1 occurring, doing our closings subsequently. And, certainly,
2 if you would like, we could do them, but it would be a
3 challenge to do so, and it would be helpful, I think, for the
4 court, if we had additional time.

5 MR. CONNOR: Your Honor, I agree with Mr. Willey. I
6 anticipated we'd be doing them next week, and I was going to
7 work on them with my co-counsel.

8 THE COURT: Well, okay. Let me -- all right. That's
9 fine. I mean, I always think closing arguments are more
10 effective when counsel have had a chance to work on them and
11 refine them.

12 I'm going to want briefing from counsel on certain issues
13 that I'm sure you're going to be dealing with in your closing
14 arguments.

15 I want to think about the timing. I can tell you right
16 now I'd like you to prepare findings and conclusions, and
17 there will be issues you need to brief that were raised, I
18 think, during the course of trial. So I'm just trying to
19 think of the timing. Do I want closing arguments first, and
20 then we can get to the briefing after. Because, otherwise,
21 closing argument will be delayed too long, because it's going
22 to take you a while to do the briefing, and I'd like to have
23 closing argument as close to the testimony I've heard as
24 possible, which I think would mean Monday, right?

25 MR. CONNOR: That would be fine with me.

1 THE COURT: I'll be traveling tomorrow and can't do
2 it, but by Monday, hopefully you'll find something else to do
3 and not spend three whole days on your closing arguments.
4 But I would like to have closing arguments sometime on
5 Monday. Rhonda and I will talk with you about setting up a
6 time, taking into account the time difference.

7 MR. WILLEY: Your Honor, I'm sorry. I have an
8 argument in the Supreme Court on Tuesday -- Washington
9 Supreme Court. It would be something of an impediment if I
10 was trying to prepare for that and the closing on Monday.

11 I'm wondering if we could talk about Wednesday or Thursday
12 of next week, if that works for the court's schedule. If it
13 doesn't, I'll move things around, but I raise that as...

14 THE COURT: Why don't we talk about Wednesday. Okay?
15 I don't want to get in the way of that.

16 MR. CONNOR: I have a mediation on Wednesday that has
17 to occur on that day because my client is pregnant and is
18 going to be delivering shortly thereafter, so I don't believe
19 I can reschedule that mediation.

20 THE COURT: Mediation on Wednesday?

21 MR. CONNOR: Yes.

22 THE COURT: And you have a Supreme Court argument on
23 Tuesday? Why don't you just come back this afternoon?
24 You're making this impossible. I suggest you get together
25 right now and talk about it, and get me a date. Would you be

1 available on Thursday?

2 MR. CONNOR: I would be available on Thursday.

3 THE COURT: Are you available on Thursday?

4 MR. WILLEY: Yes.

5 THE COURT: All right. We'll pick Thursday. I don't
6 want to hear anybody else having any problems.

I would like to see Mr. Connor and Mr. Willey in chambers,
just the two of you, please.

9 Court will be adjourned.

10 (Proceedings adjourned at 12:22 p.m.)

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 22nd day of October 2019.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter